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10/542,380

08/05/2005

John Knorr

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EXAMINER

BERMAN, BRIAN J

ART UNIT

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3688

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/542,380	Applicant(s) KNORR, JOHN	
	Examiner BRIAN BERMAN	Art Unit 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/14/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/5/2005, 9/14/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the claims

1. This Office Action is in response to the preliminary Amendment filed on July 14, 2005. The Amendment cancelled claims 1-27. The Amendment added claims 28-52. Therefore, the currently pending claims considered below are Claims 28-52.

Claim Objections

2. In claims 30, 40, and 51, the language “organisation” should apparently be --organization--.

In claim 32, 42, the language “utililised” should apparently be --utilized--.

In claim 51, the language “categorised” should apparently be --categorized--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 28-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. In claims 28-52, there is no support for the two different uses of the language “system”. The word “system” is used as both a membership organization, and as a mobile phone to receive offers. The word "system" cannot refer to two different meanings. There is no machine or apparatus being used in the membership organization. One skilled in the relevant art would interpret a system to contain a machine or apparatus, not a membership organization. Since the word “system” is being used in two different ways, one skilled in the relevant art could NOT practice this invention without undue experimentation. Since the claims define “system” to mean both a membership organization and a mobile phone to receive offers, the claim fails to comply with the written description requirement.

5. Claims 28-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 28-50: The language "spatial marketplace system" is unclear. The language “spatial marketplace system” is not clearly defined in the specification. The language "spatial marketplace system" is undefined except by system claim 39, but claim 28 uses the term to mean a membership organization, not the "system" defined by claim 39. Therefore, no patentable

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weight was given to the term “spatial marketplace system.” The dependent claims do not overcome this problem.

7. In claims 39-50, the element “means for assigning, means for associating, means for delivering, means for accompanying, means to associate, means for nominating, and means define” is a means plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The dependent claims do not overcome this problem.

Applicant is required to:

a) Amend the claim so that the claim limitation will no longer be a means plus function limitation under 35 U.S.C. 112, sixth paragraph; or

b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132 (a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132 (a)); or

b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75 (d) and MPEP 2181 and 608.01 (o).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 39-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention is directed to non-statutory subject matter because the claimed invention does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101

<http://www.uspto.gov/web/offices/pac/mpep/documents/appxl_35_U_S_C_101.htm> (process, machine, manufacture, or composition of matter). Therefore, the claimed invention is not patent eligible subject matter.

Claim 39 is non-statutory, since the claim is not a machine, process, manufacture, or composition of matter. One of ordinary skill in the art interprets system to be a machine or apparatus. However, in claim 28 and 39, the language "system" deals with a membership organization. Therefore, a membership system is not a machine or apparatus. Applicant does mention means for receiving offers by a mobile phone. The word "system" is being used in two different ways, both a phone and a membership organization. Since a membership organization is not a machine or apparatus, claim 39 is non-statutory subject matter. The dependent claims do not overcome this problem.

9. Claims 28-38 and 51-52 are rejected under 35 U.S.C. 101 because the claimed invention is not directed to statutory subject matter. Based on Supreme Court precedent, to be patent eligible under 35 U.S.C. 101 a method/process claim must (1) be tied to a particular machine or

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apparatus or (2) transform a particular article into a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 70 (1972); *Diamond v. Diehr*, 450 U.S. 192 (1981); *Parker v. Flook*, 437 U.S. 589 n.9 (1978); and *Cochrane v. Deener*, 94 U.S. 780, 788 (1876)). Furthermore, the Supreme Court held that the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patentability (*Benson*, 409 U.S. 71-72). The involvement of the machine or transformation must not merely be insignificant extra-solution activity (*Flook*, 437 U.S. 590). Also see *In re Bilski*, No. 2007-1130, _F.3d_, 2008 WL4757.

10. The instant claims 28-38 and 51-52 fail to meet this test. The claims fail to transform a particular article into a different state or thing. The claims are tied to a machine or apparatus, a "recording the names of the members in a database", but this is at best a nominal recitation that does not qualify as a *specific* machine and does not impose a meaningful limitation. Data entry or inputting data is insignificant extra-solution activity. There must be a nontrivial use of a machine or apparatus. The dependent claims do not overcome this problem.

11. **As per Claims 39-50:** Claims 39-50 recite "means for assigning, means for associating, means for delivering, means for accompanying, means to associate, means for nominating, and means define". However, according to the Specification, the "means for" could be software. Therefore, as the system claim is broad enough to be read on software, it is non-statutory under 35 U.S.C. § 101 (MPEP 2106.01). Specifically, in independent claim 39, the preamble of the claim recites a system, indicating structure or hardware, whereas the body of the claim recites data or software per se, which is not statutory. Further, the "means for" as defined in the

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specification, represent software, not hardware. The preamble talks about a system, while the body recites software per se. The dependent claims do not overcome this problem.

12. As per claims 39-50: The preamble of claims 39-50 recites "a spatial marketplace system" However, this recitation of "spatial marketplace system" in the preamble is not enough to overcome this 35 U.S.C. 101 rejection. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The dependent claims do not overcome this problem.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. **Claims 28, 29, 31-39, 41-50** are rejected under 35 U.S.C. 102(e) as being anticipated by Jokinen, US Patent 7,343,317.

As per claim 28 and 39 (system of claim 28), Jokinen specifically discloses the invention as claimed, including

a method of managing the delivery of offers from suppliers to members via a spatial marketplace system including the steps of: (abstract)

- (a) registering potential customers as members of the spatial marketplace system by recording their names and contact details in a database; (col 5, lines 39-63)
 - (b) assigning a spatial identifier to each database record, the spatial identifier being sourced from the contact details supplied during a registration process; (col 5, lines 39-63)
 - (c) each member nominating one or more attributes corresponding to a commodity in relation to which the member is interested in receiving offers; (col 5, lines 39-63)
 - (d) each supplier defining a geographic region in which the supplier wishes to do business and nominating one or more attributes corresponding to commodities which the supplier wishes to sell; (col 7, lines 40-48; col 1, lines 29-34; col 9, lines 9-11; col 10, lines 2-3)
 - (e) using a spatial identifier location algorithm to identify the database records with spatial identifiers located within the geographical region defined by the supplier; (col 8, lines 48-51; col 9, lines 50-65; Fig. 3B)
- wherein delivery of offers from a supplier is restricted to members associated with the identified database records which have nominated attributes matching the attributes nominated by the supplier. (col 9, lines 50-65)

Regarding claim 29, Jokinen further discloses

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A method according to claim 28, further including the step of advising each supplier of the number of identified database records associated with nominated attributes matching the attributes nominated by the supplier and the cost of delivering offers to members associated with each of those database records, wherein the supplier either agrees to deliver offers to each of the members thereby incurring the cost, or modifies the geographical region to increase or decrease the number of offers to be delivered. (col 7, lines 38-48; col 8, lines 25-31)

Regarding claims 31 and 41 (system of claim 31), Jokinen further discloses

A method according to claims 28 and 39, further including the step of the supplier associating a numeric qualifier or range of numeric qualifiers with one or more attributes, wherein the delivery of offers is further restricted to members which have nominated a numeric qualifier for the relevant attribute which matches or falls within the range of the numeric qualifiers nominated by the supplier. (col 5, lines 39-63; col 9, lines 50-65, Fig. 3B)

Regarding claims 32 and 42 (system of claim 32), Jokinen further discloses

A method according to claims 28 and 39, further including the step of the member nominating a preferred settlement or payment option selected from a menu provided by the system, wherein the delivery of offers is further restricted to members which have nominated a settlement or payment option which matches the settlement or payment options utilized by the supplier. (col 8, lines 2-15; e-coupon, agreeing to a discount on a future payment)

Regarding claims 33 and 43 (system of claim 33), Jokinen further discloses

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A method according to claims 28 and 39, further including the step of the member nominating a point in time and a time interval when a request for offers will be presented to suppliers. (col 8, lines 7-15)

Regarding claims 34 and 44 (system of claim 34), Jokinen further discloses

A method according to claims 28 and 39, further including the step of the member nominating a mode via which the offers will be delivered from the supplier to the member. (abstract; col 9, line 65 – col 10, line 2; electronic coupon, mobile terminal)

Regarding claims 35 and 45 (system of claim 35), Jokinen further discloses

A method according to claims 34 and 44, wherein the mode via which the offers will be delivered from the supplier to the member is selected from one or more of the following: (a) via a member's system control panel; (b) via the member's email; (c) via a nominated third party email; (d) via telephone; (e) via short message service (SMS); or (f) via post. (col 13, lines 15-24; text message, Fig. 8, abstract; col 9, line 65 – col 10, line 2; electronic coupon, mobile terminal)

Regarding claims 36 and 46 (system of claim 36), Jokinen further discloses

A method according to claims 28 and 39, wherein the geographical region is an area within a distance from one or more geographical points nominated by the supplier. (col 9, lines 9-11; col 10, lines 2-3)

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Regarding claims 37 and 47 (system of claim 37), Jokinen further discloses

A method according to claims 28 and 39, wherein the geographical region is an area displayed on a map presented to the supplier on an interface, whereby modification of the area displayed on the map results in a corresponding modification in the geographical region. (col 13, lines 15-24, Fig. 8, map style)

Regarding claims 38 and 49 (system of claim 38), Jokinen further discloses

A method according to claims 28 and 39, wherein each attribute is defined by at least four levels, each consecutive level providing a refinement to a description of the commodity. (col 5, lines 39-63; col 8, lines 2-15, there is NO limit (stored in the database of user preferences) to how many different levels are used to describe the user's stated personal preferences, regarding what specific types of goods and services the user is interested in receiving related offers; col 2, lines 15-43, "matching at least one criterion", the language "at least one" reads on and includes "at least four")

Regarding claim 48, Jokinen discloses a system according to claim 39, further including means by which suppliers generate automated offers in response to requests for offers from members.

(abstract, col 8, lines 2-15; col 9, line 50 – col 10, line 2; electronic coupon, col 5, lines 39-63)

Regarding claim 50, Jokinen discloses a system according to claim 39, further including an attribute database associated with the system, the attribute database including the commodities to

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be offered using the system and a corresponding unique attribute identifier which describes or relates to each of the goods or services. (col 5, lines 53-63; col 8, lines 2-5)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claims 30, 40, and 51** are rejected under 35 U.S.C. 103(a) as being unpatentable over Jokinen, US Patent 7,343,317 in view of Bezos, US Patent 6,029,141.

Regarding claims 30 and 40 (system of claim 30), Jokinen discloses a method according to claims 28 and 39.

Jokinen does not disclose including the step of accompanying each database record by details of memberships to a third party organization, wherein the third party organization receives a percentage of revenue from the spatial marketplace system in return for introducing their members to the system.

However, Bezos discloses including the step of accompanying each database record by details of memberships to a third party organization, wherein the third party organization receives a percentage of revenue from the spatial marketplace system in return for introducing their members to the system. (Bezoes, col 2, lines 14-18, the referral commission is automatically generated based on a fixed percentage of the merchant's selling price, and is paid to the

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associate, abstract, col 11, lines 12-15; col 15, lines 66-67, an associate in Bezos can refer any group or third party organization to join the system, such as his friends, co-workers, book club, stock club, fantasy football league, or his soccer team)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of *Jokinen* to give a referral fee in the form of a fixed commission percentage in *Bezos* thereby attracting new customers to the system. The rationale is that giving a person a referral fee in the form of fixed commission percentage (such as a real estate agent or broker or any other type of recruiter) encourages and motivates the recruiter to sign up as many new members as possible. In sales (such as real estate), a person's salary is mostly commission based, so this encourages the person to try and close as many deals as possible. This will increase companies' profits by sending advertisements and offers to more registered members in the system. The more members in the database, the more valuable the database will be. For example, a list of 10,000 members is more valuable than a list of 10 members.

Regarding claim 51, Jokinen disclose a method of establishing a database of potential customers for the delivery of offers, the method including the following steps:

(b) members are offered an incentive in exchange for registering, providing a spatial identifier, nominating attributes corresponding to commodities in relation to which the member consents to receiving offers; and (col 5, lines 39-63, abstract, member receives electronic coupons (or incentives or discounts) after registering in the system

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(c) suppliers are granted access to a register of members which are categorized according to their spatial identifiers and attribute profiles; thereby enabling advertisers to target members whose spatial identifiers and attribute profiles correspond to criteria predetermined by the supplier. (col 5, lines 40-63)

Jokinen does not disclose (a) organizations maintaining a membership database introduce their members to a spatial marketplace system as members in return for a percentage of revenue.

However, Bezos discloses (a) organizations maintaining a membership database introduce their members to a spatial marketplace system as members in return for a percentage of revenue. (Bezoz, col 2, lines 14-18, the referral commission is automatically generated based on a fixed percentage of the merchant's selling price, and is paid to the associate, abstract, col 11, lines 12-15; col 15, lines 66-67, an associate in Bezos can refer any group or third party organization to join the system, such as his friends, co-workers, book club, stock club, fantasy football league, or his soccer team)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of *Jokinen* to give a referral fee in the form of a fixed commission percentage to an associate in *Bezoz* thereby attracting new customers to the system. The rationale is that giving a person a referral fee in the form of fixed commission percentage (such as a real estate agent or broker or any other type of recruiter) encourages and motivates the recruiter to sign up as many new members as possible. In sales (such as real estate), a person's salary is mostly commission based, so this encourages the person to try and close as many deals as possible. This will increase companies' profits by sending advertisements and offers to more registered members in the system. The more members in the database, the

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more valuable the database will be. For example, a list of 10,000 members is more valuable than a list of 10 members.

Also, if a certain group joins (such as a soccer team), the entire group will all have a common interest in purchasing similar items (soccer goods, soccer apparel, soccer balls). Therefore, when an organization joins the system, that common element (such as soccer) can be used to send targeted advertisements, even before having to ask any questions about the individual user's interests in specific goods.

Everyone wants to save money. Giving out discounts and incentives (after registering in the system, such as a VIP bonus card at a grocery store) helps to attract new customers and retain loyal customers. Therefore, offering incentives (to a potential new customer for signing up or registering in the system) is a recruitment tool to get people to sign up as new members, and keep them as loyal members of that particular store or brand.

15. **Claim 52** is rejected under 35 U.S.C. 103(a) as being unpatentable over Jokinen, US Patent 7,343,317 in view of Bezos, US Patent 6,029,141 and further in view of Official Notice.

Regarding claim 52, Jokinen in view of Bezos discloses a method of establishing a database of potential customers according to claim 51.

Jokinen in view of Bezos does not disclose wherein the incentive offered to members is use of a personal website.

Official Notice is taken that giving access to a personal website has been known as a way to recruit new customers. For example, Pepsi and other soda bottle caps contain unique codes, identifier numbers, and passwords. These unique codes, identifier numbers, and passwords allow

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a user to access a company's website. A person accesses the website to see if he qualified for or won any prizes, such as money (based on the access codes listed on the soda bottle cap). The company asks the website user (potential new member) to sign up as a new member, in order to see if he won any prizes. The website user will be required to put in his name, personal contact information, and user preferences.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Jokinen in view of Bezos with the commonly recognized practice of giving access to a personal website (Official Notice) thereby helping to both attract new members and retain loyal customers. The rationale is that increased consumer enthusiasm for using the internet existed at the time of the invention. This allows a company to encourage people to check out and visit the company's website. Getting more traffic to the company's website will lead to more advertising revenue and more future sales and profits for the company, thereby increasing the company's bottom line. Visiting a company's website also helps build customer loyalty, and can lead to purchasing products online.

Everyone wants to save money. Giving out discounts and incentives (after registering in the system, such as a VIP bonus card at a grocery store) helps to attract new customers and retain loyal customers. Therefore, offering incentives (to a potential new customer for signing up or registering in the system) is a recruitment tool to get people to sign up as new members, and keep them as loyal members of that particular store or brand.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Berman whose telephone number is (571) 270-3603. The examiner can normally be reached on Monday through Thursday 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Weinhardt can be reached on (571) 272-6633. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian Berman/
Examiner, Art Unit 3688
9/15/2009

/Donald L. Champagne/
Primary Examiner, Art Unit 3688
571-272-6717